

Exhibit 39

CONFIDENTIAL
Christian Ekstrand - May 6, 2021

Page 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
MASTER DOCKET 18-MD-2865 (LAK)
CASE NO. 18-CV-09797

IN RE:)
)
)
CUSTOMS AND TAX ADMINISTRATION OF)
THE KINGDOM OF DENMARK)
(SKATTEFORVALTNINGEN) TAX REFUND)
SCHEME LITIGATION)
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REMOTE VTC VIDEOTAPED DEPOSITION UNDER ORAL
EXAMINATION OF
CHRISTIAN EKSTRAND - VOLUME I
DATE: May 6, 2021

REPORTED BY: CHARLENE FRIEDMAN, CCR, RPR, CRR

CONFIDENTIAL
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Page 183

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CHRISTIAN EKSTRAND - VOLUME II
DATE: May 7, 2021

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CONFIDENTIAL
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9 (Pages 30 to 33)

Page 30	Page 31
<p>1 THE WITNESS: Sorry.</p> <p>2 Q Did Accounting 2 have any control 3 functions?</p> <p>4 MR. WEINSTEIN: Objection to form.</p> <p>5 A You can say that the way we were 6 organized, it is an accounting department. 7 But they were responsible for controlling and 8 checking refunds of dividend withholding tax.</p> <p>9 Q When you say "they were responsible 10 for controlling and checking refunds of 11 dividend withholding tax," what do you mean?</p> <p>12 A I mean that when you claim refunds 13 of dividend withholding tax, you must meet 14 certain conditions and you have to document 15 those requirements in connection with your 16 claim for refund. But Accounting 2 checks 17 with the claim board, including checking of 18 the documents, very fine documenting that you 19 are the beneficial owner or included in the 20 claim or the application for refund.</p> <p>21 And the application of claim was 22 rejected if the requirements were not met.</p> <p>23 Q During the time period of January 24 2012 to August 2015, who was the head of 25 Accounting 2?</p>	<p>1 A As I remember it, Lisbeth R□mer was 2 the head of the department until October '13, 3 approximately, when she retired, and Dorthe 4 Pannerup took over the position.</p> <p>5 D-O-R-T-H-E, and last name, P-A-N-N-E-R-U-P.</p> <p>6 Q Do you know about how many 7 employees Accounting 2 had during that 8 period?</p> <p>9 A I don't know for the entire 10 department exactly, but probably about a 11 man count of 20, but if you're talking 12 specifically about Accounting 2, it was five 13 or six people.</p> <p>14 Q Did that stay consistent over the 15 2012 to 2015 time period?</p> <p>16 A Yes, that was during that period. 17 It could vary, too, because people might have 18 stopped working and new employees come in.</p> <p>19 Q Were there budget cuts to 20 Accounting 2 during the period 2005 to 2015?</p> <p>21 A Could you repeat the period?</p> <p>22 Apparently I got that wrong.</p> <p>23 You were asking about which period?</p> <p>24 Q 2005 to 2015.</p> <p>25 A Okay. I don't know about the</p>
<p>1 Page 32</p> <p>1 specific budget cuts. But generally, there 2 were budget cuts in the tax agency during 3 that period.</p> <p>4 Q Were there complaints from 5 personnel in Accounting 2 about a lack of 6 resources?</p> <p>7 MR. WEINSTEIN: Objection to form. 8 Are you talking about for a ten-year period?</p> <p>9 MR. SCHOENFELD: Correct.</p> <p>10 MR. WEINSTEIN: Objection to form.</p> <p>11 A I don't think I can answer 12 specifically, but as in all instances of 13 SKAT, there was some frustration about 14 resources during the period.</p> <p>15 Q Who is Sven Nielsen?</p> <p>16 A He was an employee of Accounting 2.</p> <p>17 Q During what time period?</p> <p>18 A He was employed during the period 19 you're asking about. If you want the 20 specific period, I don't have that, but I can 21 look it up.</p> <p>22 Q During that time period, what were 23 Sven's responsibilities?</p> <p>24 A He was responsible for handling the 25 reclaims and for entering them into the 3S</p>	<p>1 Page 33</p> <p>1 system.</p> <p>2 Q Was anyone other than Sven Nielsen 3 responsible for handling reclaims?</p> <p>4 A Well, there were other employees. 5 There was a person called Laurits Cramer who 6 was -- generally, he was opening the mailing 7 and sorting it.</p> <p>8 And there were two ladies who did 9 some inputs in the system, but it was 10 generally Sven who did it.</p> <p>11 Q Was Sven's work in processing 12 reclaims subject to any auditing?</p> <p>13 MR. WEINSTEIN: Objection to form.</p> <p>14 A I don't understand the question, so 15 could you ask it again? Rephrase it, please?</p> <p>16 Q Did anyone in Accounting 2 or in 17 Payments and Accounting have responsibility 18 for auditing Sven's work in approving or 19 rejecting reclaim applications?</p> <p>20 MR. WEINSTEIN: Objection to form.</p> <p>21 A I don't know if anybody was 22 responsible for auditing Sven's work, but 23 when you're talking about payments of 24 disbursements, there's a functional 25 separation as always.</p>

CONFIDENTIAL
Christian Ekstrand - May 6, 2021

18 (Pages 66 to 69)

Page 66	Page 67
<p>1 there being any further investigation or 2 pushback on the explanation?</p> <p>3 MR. WEINSTEIN: Objection to the 4 form.</p> <p>5 A I base my reply on the fact that I 6 don't know whether further investigations 7 were made.</p> <p>8 Q Do you know whether there was any 9 discussion within SKAT about steps it could 10 take to learn more about the U.S. pension 11 plans investing in Danish companies?</p> <p>12 MR. WEINSTEIN: Objection to form.</p> <p>13 A It's not something I know for 14 certain, that I haven't heard that such 15 discussions took place.</p> <p>16 Q Did SKAT consider asking the 17 American pension plans for more information 18 about their investments or refund 19 applications?</p> <p>20 MR. WEINSTEIN: Objection to form.</p> <p>21 A No, I don't know.</p> <p>22 Q Mr. Ekstrand, you testified 23 earlier -- sorry. Was that someone talking? 24 Okay.</p> <p>25 Mr. Ekstrand, you testified earlier</p>	<p>1 that you were familiar with reports from SIR, 2 SKAT's internal audit department.</p> <p>3 Is that right?</p> <p>4 A Yes. I know that SIR has made the 5 reports on this area.</p> <p>6 Q And SIR concluded in 2015 that the 7 explanations given in these accounting 8 reports, their plausibility checks, were not 9 adequate, correct?</p> <p>10 MR. WEINSTEIN: Sorry. Just one 11 second now. We're having some background 12 noise that should stop in about ten seconds.</p> <p>13 A Could you please tell me where in 14 the report I should find the conclusion?</p> <p>15 Q Sure.</p> <p>16 MR. WEINSTEIN: Sure. Also, Alan, 17 just so you know, I think it's 3:00 p.m. 18 here. There was going to be a shift in 19 interpreters. I know the second interpreter 20 is here.</p> <p>21 MR. SCHOENFELD: Okay. Let me just 22 finish this question.</p> <p>23 Q So Mr. Ekstrand, if you go to 24 Exhibit 3007? And if you look at the bottom 25 right-hand corner of each page, they have a</p>
Page 68	Page 69
<p>1 number.</p> <p>2 And I'm referring to the page 3 ending 898 in Exhibit 3007.</p> <p>4 THE INTERPRETER: 898?</p> <p>5 MR. SCHOENFELD: 898.</p> <p>6 (Above-mentioned document marked 7 for identifications.)</p> <p>8 Q So are you with me at Page 64 of 9 123 of the document, Bates 898?</p> <p>10 A Yes.</p> <p>11 Q And you see the last paragraph on 12 the page beginning "SKAT foretager?"</p> <p>13 A Yes.</p> <p>14 Q And does SIR conclude in that 15 paragraph that there was an inefficiently 16 critical appraisal of the causal explanations 17 offered in these accounting reports?</p> <p>18 THE INTERPRETER: Can you repeat 19 the question?</p> <p>20 Q The explanation for the increases?</p> <p>21 A He says that -- he also says that 22 based on the listing basis of documentation 23 that was in the critical conclusion. The 24 report was issued in 2015 and it's after we 25 got the information that we had been</p>	<p>1 defrauded, and that the main reason for 2 the -- or the main background for the fraud 3 was that U.S. pension plans had incorrectly 4 claimed refund amounts.</p> <p>5 And in my view, the conclusion is 6 made in hindsight based on the information 7 that they have at that time.</p> <p>8 Q Okay.</p> <p>9 MR. SCHOENFELD: Why don't we take 10 a break and swap out translators.</p> <p>11 VIDEO OPERATOR: Stand by. The 12 time the 9:05 a.m. New York time and we're 13 going off the record.</p> <p>14</p> <p>15 K R I S T E N F O L L I N, 16 Called as the official interpreter in 17 this action, was duly sworn to faithfully translate 18 the questions to the witness from English to 19 Danish, and the answers from Danish to English.</p> <p>20</p> <p>21 VIDEO OPERATOR: The time is 9:21 22 a.m. New York time and we're back on record.</p> <p>23 Q Mr. Ekstrand, SKAT is the agency of 24 the Danish government charged with the 25 assessment and collection of Danish taxes,</p>

CONFIDENTIAL
Christian Ekstrand - May 6, 2021

19 (Pages 70 to 73)

Page 70	Page 71
<p>1 correct?</p> <p>2 A Yes.</p> <p>3 Q And among the taxes that SKAT</p> <p>4 collects, it collects dividend withholding</p> <p>5 tax, correct?</p> <p>6 A Yes.</p> <p>7 Q And when SKAT pays out dividend</p> <p>8 withholding tax refunds, it uses tax revenues</p> <p>9 to make those payments, correct?</p> <p>10 MR. WEINSTEIN: Objection.</p> <p>11 A So when there is dividend</p> <p>12 withholding tax, then that is -- those are</p> <p>13 the funds you can have -- invest.</p> <p>14 Q So the money SKAT's seeking to</p> <p>15 recover in this case represents tax revenue</p> <p>16 wrongly paid out to claimants, correct?</p> <p>17 MR. WEINSTEIN: Objection to form.</p> <p>18 A To my knowledge, we have filed a</p> <p>19 suit to recover funds that we have wrongly</p> <p>20 paid out.</p> <p>21 MR. WEINSTEIN: Alan, I'll also</p> <p>22 just note that if you're asking about</p> <p>23 subjects 15 -- I'm sorry, 16 and 17 in the</p> <p>24 30(b) (6) notice, we had designated another</p> <p>25 witness as SKAT's witness on those subjects.</p>	<p>1 He's already testified.</p> <p>2 These questions are not within the</p> <p>3 notice that we designated Mr. Ekstrand to</p> <p>4 cover.</p> <p>5 MR. SCHOENFELD: Okay. To the</p> <p>6 extent he knows the answer to these</p> <p>7 questions, he can answer them in his</p> <p>8 individual capacity.</p> <p>9 Q Mr. Ekstrand, there -- during the</p> <p>10 relevant time period, there were different</p> <p>11 ways to obtain a reclaim of dividend</p> <p>12 withholding tax, correct?</p> <p>13 A Yes.</p> <p>14 Q There was something called the</p> <p>15 "bank scheme," right?</p> <p>16 THE INTERPRETER: Excuse me? What,</p> <p>17 sir?</p> <p>18 Q There was something called the</p> <p>19 "bank scheme?"</p> <p>20 A Yes.</p> <p>21 Q And then there was something called</p> <p>22 the "form scheme," right?</p> <p>23 A Yes.</p> <p>24 Q And the "form scheme" just means</p> <p>25 that the party requesting the reclaim</p>
<p style="text-align: center;">Page 72</p> <p>1 completes the form that we looked at earlier,</p> <p>2 correct?</p> <p>3 MR. WEINSTEIN: Objection.</p> <p>4 A In order to be -- to be part of the</p> <p>5 form scheme, we -- you have to fill out the</p> <p>6 form that I referred to earlier and attach</p> <p>7 relevant documentation.</p> <p>8 Q And that form had to be submitted</p> <p>9 to SKAT, correct?</p> <p>10 A Yes.</p> <p>11 Q The taxpayer couldn't submit that</p> <p>12 form to some other part of the Danish</p> <p>13 government, right?</p> <p>14 A SKAT is the relevant recipient of</p> <p>15 that form.</p> <p>16 Q The claimant couldn't submit that</p> <p>17 form to the issuer of the securities, right?</p> <p>18 A No.</p> <p>19 Q And after receiving the form, SKAT</p> <p>20 makes a decision about whether or not to pay</p> <p>21 the refund, right?</p> <p>22 A Once the form has been received,</p> <p>23 checks are made to see that the conditions</p> <p>24 for receiving payment are met before payment</p> <p>25 is made.</p>	<p style="text-align: center;">Page 73</p> <p>1 Q And SKAT is the agency that makes</p> <p>2 that decision whether to pay the refunds,</p> <p>3 correct?</p> <p>4 A Yes.</p> <p>5 Q There's no other part of the Danish</p> <p>6 government that can approve these refunds,</p> <p>7 right?</p> <p>8 A No.</p> <p>9 Q VP Securities can't provide the</p> <p>10 refund, right?</p> <p>11 A I'm not sure I understand the</p> <p>12 question.</p> <p>13 Q So I think you testified that in</p> <p>14 order to get a refund of dividend withholding</p> <p>15 tax, the application needs to be submitted to</p> <p>16 SKAT, correct?</p> <p>17 A Yes.</p> <p>18 Q And so am I correct that</p> <p>19 VP Securities is not itself able to pay a</p> <p>20 refund out to a shareholder?</p> <p>21 Is that right?</p> <p>22 A Correct.</p> <p>23 Q And a U.S. pension plan owning</p> <p>24 shares of a Danish company couldn't require</p> <p>25 that company to pay its dividend on a gross</p>

CONFIDENTIAL
Christian Ekstrand - May 6, 2021

20 (Pages 74 to 77)

Page 74	Page 75
<p>1 basis without withholding, correct?</p> <p>2 MR. WEINSTEIN: Objection to form.</p> <p>3 THE INTERPRETER: Can I just ask</p> <p>4 you to repeat the question, please? That the</p> <p>5 U.S. pension plan --</p> <p>6 Q A U.S. pension plan owning shares</p> <p>7 in a Danish company couldn't require that</p> <p>8 company to pay its dividend on a gross basis</p> <p>9 without withholding, correct?</p> <p>10 MR. WEINSTEIN: Objection.</p> <p>11 A No. And maybe we just need to</p> <p>12 understand the process because it is not the</p> <p>13 company handling the payment. So -- and we</p> <p>14 need to understand the process.</p> <p>15 This is not handled by</p> <p>16 VP Securities. The company itself are the</p> <p>17 ones who would hold the amount that they will</p> <p>18 pay as dividends.</p> <p>19 Subsequently, VP Securities will</p> <p>20 make a calculation to see how much is to be</p> <p>21 paid in dividend and how much is to be</p> <p>22 withhold for taxes. And then, subsequently,</p> <p>23 the funds will be paid out to the relevant</p> <p>24 parties as well and the taxes will be</p> <p>25 withheld.</p>	<p>1 And the relevant dividend</p> <p>2 recipients are the ones that are known to VP.</p> <p>3 Q A U.S. pension plan can't say to</p> <p>4 the company, the Danish company issuing the</p> <p>5 dividend, "I don't want to deal with the</p> <p>6 refund process, just pay me a gross</p> <p>7 dividend," correct?</p> <p>8 MR. WEINSTEIN: Objection to form.</p> <p>9 A No.</p> <p>10 Q No, it can't, correct?</p> <p>11 A No, it cannot.</p> <p>12 Q Okay. So in this case, SKAT</p> <p>13 received the defendant's refund applications,</p> <p>14 right?</p> <p>15 A Yes.</p> <p>16 Q And SKAT reviewed those</p> <p>17 applications, right?</p> <p>18 A Yes.</p> <p>19 Q And SKAT made the decision to pay</p> <p>20 out withheld dividend tax to the pension plan</p> <p>21 in each of these cases, correct?</p> <p>22 A Yes. SKAT went through the</p> <p>23 documentation that we have received.</p> <p>24 And upon this review, we have</p> <p>25 decided to refund the amounts.</p>
<p style="text-align: center;">Page 76</p> <p>1 Q And SKAT determined that each</p> <p>2 claimant was subject to a double taxation</p> <p>3 treaty, correct?</p> <p>4 A Yes. Because the claimant has</p> <p>5 included documentation as to where they are</p> <p>6 taxable, that they are domiciled in the U.S.</p> <p>7 and are obligated to pay taxes in the U.S.</p> <p>8 Q I think you testified earlier that</p> <p>9 there's an operative definition of</p> <p>10 "beneficial owner" within SKAT.</p> <p>11 Is that right?</p> <p>12 A What I said was that you had to be</p> <p>13 the rightful owner of the shares in order to</p> <p>14 claim a refund. But one of the conditions</p> <p>15 also is that you, in actuality, are domiciled</p> <p>16 at a location where we have a double taxation</p> <p>17 agreement so that there is taxes to refund.</p> <p>18 Q Right. I'm focused on this</p> <p>19 question of the rightful owner.</p> <p>20 I believe you testified earlier</p> <p>21 that there's a definition that SKAT applies</p> <p>22 to determine whether someone is the rightful</p> <p>23 beneficial owner of the dividends for</p> <p>24 purposes of processing these refund</p> <p>25 applications, correct?</p>	<p style="text-align: center;">Page 77</p> <p>1 MR. WEINSTEIN: Objection to form.</p> <p>2 Misstates his testimony.</p> <p>3 A So as I mentioned earlier, we have</p> <p>4 a -- legal guidelines, including the</p> <p>5 definition. And I also said earlier that if</p> <p>6 you want an elaboration of the concept</p> <p>7 "beneficial owner," I'm not the right person</p> <p>8 to ask.</p> <p>9 Q But in approving the refund claims,</p> <p>10 SKAT determined that the claimant was a</p> <p>11 beneficial owner under SKAT's guidelines for</p> <p>12 determination of who's the beneficial owner,</p> <p>13 correct?</p> <p>14 A The control is performed by SKAT of</p> <p>15 the documentation that the person in question</p> <p>16 is the beneficial owner. And why would we</p> <p>17 then think otherwise, since we receive a</p> <p>18 declaration to that effect as well as</p> <p>19 documentation of the domicile of the entity</p> <p>20 in question?</p> <p>21 And we also received dividend</p> <p>22 credit advice saying that the entity in</p> <p>23 question has received a dividend, and that</p> <p>24 there is -- and that taxes have been</p> <p>25 withheld.</p>

CONFIDENTIAL
Christian Ekstrand – May 6, 2021

26 (Pages 98 to 101)

Page 98	Page 99
<p>1 paid on a balance principle and not 2 separately accounted."</p> <p>3 MR. WEINSTEIN: Objection to form.</p> <p>4 A Yes, I will try.</p> <p>5 So the company had one tax account, 6 which is what I said earlier. So once there 7 is an amount outstanding and there is a 8 payment deadline, this will be recorded in 9 your account as an amount due.</p> <p>10 So if you do not pay the amount, 11 then the amount remains in the account. And 12 then -- so then, again, with the example of 13 the 50 million, there are -- you have the 14 50 million that is withholding tax, 15 50 million, something other taxes, and 16 100 million in total -- these amounts will 17 afford you, in succession, and that 18 was -- stand up in your account, then 19 obviously, if there are any credits or 20 whatever due, then that will be -- offset 21 this amount and then you will have to pay the 22 remaining amount.</p> <p>23 But if you had no other taxes to 24 pay other than your withholding, this tax 25 would be in your account and then due. So in</p>	<p>1 my mind, my thinking is the same as well as 2 stated in the text that we read out loud.</p> <p>3 Q So let's say that on January 1st, 4 you've got 50 million kroner in tax credits 5 in your account, and 50 million kroner in 6 dividend withholding taxes is due to SKAT on 7 January 10th.</p> <p>8 Do you have that in mind?</p> <p>9 A Just to -- just to check, are you 10 saying that 50 million outstanding plus 11 50 million withholding tax, or both amounts 12 due, or did you say 50 million tax credit and 13 50 million withholding tax?</p> <p>14 Q 50 million tax credit in the 15 account on the day that 50 million in 16 withholding tax is due to be paid to SKAT.</p> <p>17 A So they even each other out, and 18 then, of course, you do not have to pay 19 50 million.</p> <p>20 Q Right. So on the date that the 21 company is obligated to remit the withholding 22 tax to SKAT, it doesn't actually pay any 23 money to SKAT, correct?</p> <p>24 MR. WEINSTEIN: Objection to form.</p> <p>25 A These are amounts that fall due, so</p>
Page 100	Page 101
<p>1 they are obligated to pay the 50 million. So 2 in itself, it didn't change anything.</p> <p>3 Q The company in this example has 4 still paid its withholding tax, right?</p> <p>5 A Yes, because they have a tax credit 6 of 50 million and they have to pay 7 withholding tax of 50 million.</p> <p>8 So those amounts even out each 9 other, and so then the account is zero.</p> <p>10 Q And so is it fair to say, as a 11 result of this netting process, SKAT doesn't 12 have any direct evidence that the company has 13 remitted withholding tax to the agency?</p> <p>14 MR. WEINSTEIN: Objection to form.</p> <p>15 A I'm not sure I understand the 16 reasoning, because they have the tax credit 17 of 50 million. Then they have to pay 18 resulting taxes of 50 million.</p> <p>19 So the money is still paid.</p> <p>20 Q But there's no evidence 21 of -- there's no -- nothing SKAT can point to 22 to show the actual payment of the withholding 23 tax, right? It's just obligations and 24 liabilities netted in the account?</p> <p>25 MR. WEINSTEIN: Objection to form.</p>	<p>1 A So I still don't understand the 2 reasoning behind your argument, because there 3 may not be something specific you can point 4 to, but they had to pay withholding tax of 5 50 million.</p> <p>6 Then they had a tax credit that is 7 offset against the payment. So they still 8 make their payment.</p> <p>9 Q But there won't be a bank receipt 10 or a SWIFT confirm for the payment of the 11 withholding tax, correct?</p> <p>12 A No, because there was no bank 13 transfer.</p> <p>14 Q Okay.</p> <p>15 MR. SCHOENFELD: Do you want to 16 take a short break now?</p> <p>17 MR. WEINSTEIN: Sure.</p> <p>18 VIDEO OPERATOR: Please stand by.</p> <p>19 The time is 10:24 a.m. New York time, and 20 we're going off the record.</p> <p>21 (Brief recess taken.)</p> <p>22 VIDEO OPERATOR: The time is 23 10:40 a.m. New York time and we're back on 24 record.</p> <p>25 Q Mr. Ekstrand, what's the name of</p>

CONFIDENTIAL
Christian Ekstrand – May 6, 2021

35 (Pages 134 to 137)

Page 134	Page 135
<p>1 for identification.)</p> <p>2 Q So Mr. Ekstrand, tell me when</p> <p>3 you're there.</p> <p>4 A Yes, I'm there.</p> <p>5 Q Okay. Have you seen this document</p> <p>6 before?</p> <p>7 A Yes.</p> <p>8 Q What is it?</p> <p>9 A This is an early warning on stock</p> <p>10 lending.</p> <p>11 Q Mr. Ekstrand, my understanding was</p> <p>12 that this is a response to an early warning,</p> <p>13 not the early warning itself.</p> <p>14 Do I have that right?</p> <p>15 A Correct.</p> <p>16 Q And the reply comes from the</p> <p>17 Ministry of Taxation, correct?</p> <p>18 A Yes.</p> <p>19 Q And the two early warnings it</p> <p>20 addresses come from within SKAT, right?</p> <p>21 There's a March 27, 2015 warning from the</p> <p>22 large companies division and a July 7, 2015</p> <p>23 warning from the Jura, SKAT's legal</p> <p>24 authority, correct?</p> <p>25 THE INTERPRETER: The second date</p>	<p>1 is July 7th?</p> <p>2 MR. SCHOENFELD: Correct.</p> <p>3 A Correct.</p> <p>4 Q Did you play any role in drafting</p> <p>5 or approving this reply document?</p> <p>6 A Not at all.</p> <p>7 Q What is an "early warning?"</p> <p>8 A So an early morning is something</p> <p>9 that you prepare if it comes to your</p> <p>10 knowledge that there is the possibility of an</p> <p>11 unforeseen effect of legislation that has</p> <p>12 come into force.</p> <p>13 Q And can you describe, based on your</p> <p>14 familiarity with this document, what the two</p> <p>15 early warnings at issue here were disclosing?</p> <p>16 A So as far as I remembered, there</p> <p>17 were some problematic registrations within</p> <p>18 VP, which means that VP did not necessarily</p> <p>19 report the beneficial owner of the share.</p> <p>20 And, for example, that means that</p> <p>21 if I own shares and then I lend them to you,</p> <p>22 then they will be registered with your</p> <p>23 custodian bank. They will then be</p> <p>24 registered -- I will lend them to you.</p> <p>25 They will then be registered with</p>
<p>1 your custodian bank and therefore, they will</p> <p>2 be registered as owned by you.</p> <p>3 Q So the upshot of the early warnings</p> <p>4 was that as a result of securities lending in</p> <p>5 the market, SKAT wasn't receiving accurate</p> <p>6 information about who owned securities.</p> <p>7 Is that right?</p> <p>8 MR. WEINSTEIN: Objection to form.</p> <p>9 A Yes. You can say that because VP</p> <p>10 did not have the possibility to check a box</p> <p>11 saying that this was stock lending.</p> <p>12 Q And so the large companies division</p> <p>13 shares this concern on March 27, 2015,</p> <p>14 correct?</p> <p>15 A Yes.</p> <p>16 Q And the response from the Ministry</p> <p>17 of Taxation comes six months later, correct?</p> <p>18 A Yes.</p> <p>19 Q Is anything done in those six</p> <p>20 months to address the issue that the large</p> <p>21 companies division raised?</p> <p>22 A Not to my knowledge, no. But</p> <p>23 the -- the answer to this early warning is</p> <p>24 quite clear, which is that you have to be the</p> <p>25 beneficial owner in order to claim a refund.</p>	<p>1 Q So on Page 10 of the reply, do you</p> <p>2 see the paragraph beginning "Som svar?"</p> <p>3 A Yes.</p> <p>4 Q And you see the last sentence of</p> <p>5 the paragraph beginning "Det er?"</p> <p>6 A Yes.</p> <p>7 Q And am I correct that what the</p> <p>8 Ministry is saying there is that it's the</p> <p>9 view of the Ministry of Taxation that in</p> <p>10 situations where the borrower has resold the</p> <p>11 securities in question to a third party, that</p> <p>12 the third party becomes the beneficial owner</p> <p>13 of the dividends?</p> <p>14 A Correct. Exactly as I said</p> <p>15 earlier.</p> <p>16 Q And so that's an accurate statement</p> <p>17 of SKAT's policy towards beneficial ownership</p> <p>18 in these circumstances?</p> <p>19 A This is how the rules are.</p> <p>20 Q SKAT's website says the same thing</p> <p>21 to taxpayers, correct?</p> <p>22 A I don't -- I have not seen that for</p> <p>23 myself.</p> <p>24 Q Did you review the website in</p> <p>25 preparation for today's deposition as a</p>

CONFIDENTIAL
Christian Ekstrand - May 6, 2021

36 (Pages 138 to 141)

Page 138	Page 139
<p>1 30(b) (6) witness?</p> <p>2 A No.</p> <p>3 Q Okay. Turn to Exhibit 3014 in your</p> <p>4 binder, please.</p> <p>5 (Above-mentioned document marked</p> <p>6 for identification.)</p> <p>7 Are you there, Mr. Ekstrand?</p> <p>8 A Yes.</p> <p>9 Q Do you recognize this document?</p> <p>10 A Yes.</p> <p>11 Q And you've recognized it as a</p> <p>12 printout of SKAT's website?</p> <p>13 A It looks as if it's something from</p> <p>14 our website.</p> <p>15 Q Okay. And so it lists the five</p> <p>16 requirements for claiming a refund of</p> <p>17 dividend withholding tax, correct?</p> <p>18 A Yes.</p> <p>19 Q And it lists -- if all five</p> <p>20 requirements are satisfied, the shareholder's</p> <p>21 entitled to a refund, correct?</p> <p>22 A Correct.</p> <p>23 Q Today, these are the only</p> <p>24 requirements to be eligible for a refund of</p> <p>25 withholding tax, right?</p>	<p>1 A So these are the five conditions</p> <p>2 that exist. However, some of them may</p> <p>3 require more documentation than others.</p> <p>4 Q But there are no other substantive</p> <p>5 requirements, correct?</p> <p>6 A No.</p> <p>7 Sorry, correct.</p> <p>8 Q Okay. And these were also the</p> <p>9 requirements for the period 2012 to 2015,</p> <p>10 correct?</p> <p>11 A More or less. The period that we</p> <p>12 are -- in the period that we are discussing,</p> <p>13 we trusted documents that we got from the</p> <p>14 custodian because this was an independent</p> <p>15 third party.</p> <p>16 It turned out, subsequently,</p> <p>17 however, where we were the victims of an</p> <p>18 advanced setup with the participation of the</p> <p>19 custodian. And thus, a dividend credit</p> <p>20 advice is -- as such, is not enough as</p> <p>21 documentation of ownership.</p> <p>22 Q Did you, in your capacity in</p> <p>23 Special Control, reach the conclusion that</p> <p>24 SKAT was the victim of an advanced setup with</p> <p>25 the participation of the custodian?</p>
Page 140	Page 141
<p>1 A First of all, we were told that</p> <p>2 there was fraud going on in this area from</p> <p>3 international partners, which included both</p> <p>4 pension plan and custodian companies.</p> <p>5 In connection with our</p> <p>6 investigation into this area, we were able to</p> <p>7 determine that the custodian entities were</p> <p>8 also part of the fraud going on.</p> <p>9 Q Are you aware of any facts</p> <p>10 supporting the conclusion that the pension</p> <p>11 plans intended to deceive SKAT as part of the</p> <p>12 advanced setup that you just described?</p> <p>13 A Well, proof as such is something to</p> <p>14 be used in a criminal case. However, we do</p> <p>15 have indications that the pension plans also</p> <p>16 participated, which are apparent from the</p> <p>17 decisions we have made concerning</p> <p>18 cancellation, which is -- which are based on</p> <p>19 the fact that these pension plans are often</p> <p>20 newly-founded companies without the necessary</p> <p>21 funds to make such extensive investments into</p> <p>22 Danish companies.</p> <p>23 Q So you're referring to the -- the</p> <p>24 factual bases for the cancellation of the</p> <p>25 reclaim applications?</p>	<p>1 A Yes. Because that is the work that</p> <p>2 we, as the tax agency, have done in this</p> <p>3 case.</p> <p>4 Q Anything else?</p> <p>5 MR. WEINSTEIN: Objection to form.</p> <p>6 A Not at present.</p> <p>7 Q Going back to the website and the</p> <p>8 five requirements, there's no requirement</p> <p>9 here concerning whether the owner of the</p> <p>10 shares hedged its purchase, correct?</p> <p>11 THE INTERPRETER: I'm sorry. The</p> <p>12 last part again?</p> <p>13 Q Going back to the website and the</p> <p>14 five requirements listed, there's no</p> <p>15 requirement here concerning whether the owner</p> <p>16 of the shares hedged its purchase, correct?</p> <p>17 MR. WEINSTEIN: Objection to form.</p> <p>18 A It doesn't say anything about that,</p> <p>19 no.</p> <p>20 Q And there's no requirement</p> <p>21 concerning whether the owner of the shares</p> <p>22 purchased those shares using financing,</p> <p>23 correct?</p> <p>24 A No, there's nothing in here</p> <p>25 preventing you from being the beneficial</p>

CONFIDENTIAL
Christian Ekstrand - May 6, 2021

37 (Pages 142 to 145)

Page 142	Page 143
<p>1 owner if you have hedged your purchase or 2 anything like that.</p> <p>3 Q And was that SKAT's position 4 between 2012 and 2015?</p> <p>5 MR. WEINSTEIN: Objection to form.</p> <p>6 A I have no idea.</p> <p>7 Q Well, let me -- let me rephrase the 8 question in case it was confusing.</p> <p>9 In the period 2012 to 2015, SKAT 10 didn't have any policy precluding an investor 11 from being the beneficial owner if the 12 investor had hedged its purchase.</p> <p>13 Is that correct?</p> <p>14 MR. WEINSTEIN: Objection to form.</p> <p>15 A No, nothing like that.</p> <p>16 Q Is that also true with respect to 17 investors who finance their purchases?</p> <p>18 MR. WEINSTEIN: Objection to form.</p> <p>19 A As the investor has entered into a 20 binding legal agreement on the purchase, 21 however he can pay for that purchase, we 22 have -- we have no opinion on that.</p> <p>23 THE INTERPRETER: Just hold on one 24 second.</p> <p>25 A As long as -- however you have</p>	<p>1 acquired the share, whether by hedging or 2 whether by whatever financing, that has 3 nothing to do with whether or not you are the 4 beneficial owner.</p> <p>5 Q When you buy yourself securities, 6 you understand that there's a trade date and 7 a settlement date, correct?</p> <p>8 A Yes.</p> <p>9 Q And what do each of those dates 10 represent?</p> <p>11 A So the trade date is the day the 12 security is traded. The settlement date is 13 the date that the -- that the deal is 14 finished, where the security is -- it comes 15 to your custodian.</p> <p>16 Q So on the trade date -- oh, I 17 apologize. Please go ahead.</p> <p>18 A Just -- the settlement date is the 19 day when the trade is final where the shares 20 go from one custodian to another.</p> <p>21 Q Okay. And on the trade date, does 22 anything happen other than an agreement being 23 entered into and confirmations exchanged?</p> <p>24 A Well, you could have payment on 25 that day, but I imagine that payment would</p>
<p style="text-align: center;">Page 144</p> <p>1 take place on the settlement date.</p> <p>2 Q Are any book entries made on the 3 trade?</p> <p>4 MR. WEINSTEIN: Objection to the 5 form.</p> <p>6 A Actually, I don't remember at this 7 time, but it is not registered with the 8 custodian. That is not until the settlement 9 date.</p> <p>10 That's when the shares move from 11 one to the other.</p> <p>12 Q Must the seller of the shares have 13 the shares on the trade date?</p> <p>14 MR. WEINSTEIN: Objection to form.</p> <p>15 A Not necessarily.</p> <p>16 Q To be entitled to a refund for a 17 dividend withholding tax, did SKAT require 18 there to be a certain number of days between 19 trade date and settlement date?</p> <p>20 A So no. But in order to be entitled 21 to dividend, you have to be the beneficial 22 owner and the -- the agreement has to be 23 made, at the latest, on the -- at the latest, 24 on the date of the general meeting.</p> <p>25 Q So if the shares are purchased on</p>	<p style="text-align: center;">Page 145</p> <p>1 or before the date of the annual general 2 meeting, the purchaser's entitled to the 3 dividend declared at that meeting.</p> <p>4 Is that right?</p> <p>5 THE INTERPRETER: So could you 6 repeat that?</p> <p>7 MR. SCHOENFELD: Yes.</p> <p>8 Q So if the shares are purchased on 9 or before the date of the annual general 10 meeting, the purchaser's entitled to the 11 dividend declared at that meeting.</p> <p>12 Is that right?</p> <p>13 MR. WEINSTEIN: Objection to form.</p> <p>14 A As long as a legal, binding 15 agreement has been made on the purchase and 16 payment, then yes.</p> <p>17 Q So if the trade date is before the 18 date of the annual general meeting?</p> <p>19 A That is not important as long as 20 he's the beneficial owner of the share on the 21 day of the general meeting.</p> <p>22 Q Was SKAT's understanding that if 23 the seller of shares receives a dividend on 24 the dividend payment date, it can pass that 25 dividend along to the purchaser?</p>

CONFIDENTIAL
Christian Ekstrand - May 7, 2021

14 (Pages 232 to 235)

Page 232	Page 233
<p>1 Q In order to conduct this 2 investigation, did you have to learn about 3 aspects of the securities market and 4 securities trading?</p> <p>5 MR. WEINSTEIN: Objection to the 6 form.</p> <p>7 A Obviously, we have gone through 8 various kinds of information about dealing 9 with shares in general.</p> <p>10 But fundamentally, this is a case 11 that is all about whether or not you are the 12 beneficial owner of the shares where you are 13 attempting to claim a refund, and not so much 14 about how you got to that.</p> <p>15 Q Did anyone within SKAT educate you 16 about this concept of beneficial ownership so 17 that you could conduct the investigation?</p> <p>18 A No, there was not. But within our 19 group we have collected a lot of information 20 about this issue. We have reached a common 21 or general understanding of what this 22 entails.</p> <p>23 Q And what was that based on?</p> <p>24 A Well, based on the information that 25 we were able to collect about dealing with</p>	<p>1 shares, obviously we have reviewed that 2 information.</p> <p>3 As I said before, it's all about 4 being able to document that you are the 5 beneficial owner for the shares when you're 6 attempting to obtain a refund, which means 7 that you need to have ownership of the 8 dividend and ownership of the shares.</p> <p>9 Q Do you recall consulting any 10 written documents to educate yourself about 11 the concept of beneficial ownership in the 12 course of your investigation?</p> <p>13 A So I can't remember specific 14 sources that I consulted, but what this is 15 all about, it's having valid -- having valid 16 sources.</p> <p>17 Q Well, let me ask the question a 18 different way.</p> <p>19 Where did your definition of 20 "beneficial ownership" come from for purposes 21 of this investigation?</p> <p>22 A So if you are looking to reclaim 23 dividend tax because you are covered by a 24 double taxation agreement, you need to be the 25 beneficial owner of the share that you're</p>
<p style="text-align: center;">Page 234</p> <p>1 seeking to reclaim tax for. And as we 2 discussed yesterday, we have within SKAT 3 legal guidelines describing the concept of 4 "beneficial owner."</p> <p>5 But I'm not the right person to ask 6 about details of the legal definition.</p> <p>7 Q My question isn't about the details 8 of the legal definition.</p> <p>9 Is there a physical document called 10 "Legal Guidelines" or something like that 11 that includes the definition, "beneficial 12 ownership?"</p> <p>13 A To my recollection, there are legal 14 guidelines describing what is needed in order 15 to constitute the beneficial owner.</p> <p>16 Q Focusing on the period 17 June/July/August 2015, do you recall anyone 18 in the course of this investigation 19 indicating that they had previously heard 20 concerns relating to the issue of false or 21 fraudulent dividend withholding tax reclams?</p> <p>22 MR. WEINSTEIN: Objection to form.</p> <p>23 A No.</p> <p>24 Q Did Dorthe Madsen ever say in June, 25 July, August 2015 that, the year before, she</p>	<p style="text-align: center;">Page 235</p> <p>1 had observed an enormous increase in dividend 2 tax withholding reclams attributable to U.S. 3 pension plans?</p> <p>4 A No.</p> <p>5 Q At some point in your investigation 6 did you learn that there was a series of 7 memos, Problemkatalog, and audit reports that 8 addressed issues related to dividend 9 withholding tax reclams?</p> <p>10 MR. WEINSTEIN: Objection to form.</p> <p>11 A No. My job was to verify the 12 reality of the information that we had 13 received and determine whether there were any 14 truth to these allegations and to determine 15 whether potentially there was a fraud case in 16 this -- within this area.</p> <p>17 Q You're aware now that those 18 documents that I just referenced exist, 19 correct?</p> <p>20 A Yes.</p> <p>21 Q How did you become aware of those 22 documents?</p> <p>23 A I became aware of those 24 subsequently.</p> <p>25 Q How?</p>

CONFIDENTIAL
Christian Ekstrand - May 7, 2021

15 (Pages 236 to 239)

Page 236	Page 237
<p>1 A Among other things, in my 2 preparation for this. 3 Q Prior to your preparation for this 4 deposition, had you been aware of the 5 existence of these documents? 6 MR. WEINSTEIN: Objection to form. 7 You've asked about a bunch of different 8 documents, so it's -- can you be more 9 specific? 10 Q I'm referring to memos, 11 Problemkatalog, and audit reports concerning 12 issues relating to dividend withholding tax? 13 MR. WEINSTEIN: So is the question 14 whether he saw any of them prior to his 15 preparation, or all of them? What is the 16 question? 17 MR. SCHOENFELD: Let's start with 18 any of them. 19 Q Had you seen any of those documents 20 prior to your preparation for this 21 deposition? 22 A Yes. 23 Q Which of them? 24 A You have to show me ones that 25 you're referring to and then I can tell you</p>	<p>1 whether I've seen it or not. Because I've 2 seen a bunch of documents. 3 Q Is it fair to say that SKAT was 4 warned about deficiencies in its dividend 5 withholding tax refund process prior to June 6 of 2015? 7 MR. WEINSTEIN: Objection to the 8 form. 9 A So what do you mean? And what 10 witnesses are you referring to? 11 Q Are you aware of warnings about any 12 weaknesses in the dividend withholding tax 13 refund process prior to June of 2015? 14 A So prior to 2015, as far as I know, 15 there are numerous reports describing this 16 issue. 17 But is there a specific one you 18 would like for us to review? 19 Q We're going to review them. I'm 20 just trying to ask about your recollection. 21 Do you know when the earliest of 22 these reports describing this issue was 23 generated within SKAT? 24 MR. WEINSTEIN: Objection to form 25 and what this issue is.</p>
<p style="text-align: center;">Page 238</p> <p>1 MR. SCHOENFELD: He just testified 2 that there are numerous reports describing 3 this issue. So I'm using his words and 4 asking him what he meant. 5 A I think that they are all reports 6 going back as far as 2000. 7 Q And as part of your 8 investigation -- well, I take that back. 9 All right. Let's look at 10 Exhibit 3002. 11 (Above-mentioned document marked 12 for identification.) 13 Q Do you have that document in front 14 of you? 15 A Yes. Yes. 16 Q Have you seen this document before? 17 A Let me get this review. I don't 18 think I've seen this exact document before. 19 I mean, I don't remember. 20 Q Did you review this document in 21 preparation for this deposition? 22 A Maybe, but I can't remember. 23 Q This is an audit record from SIR, 24 correct? 25 A It looks like it.</p>	<p style="text-align: center;">Page 239</p> <p>1 Q And what is SIR? 2 A So it is SKAT's internal audit. 3 Q And what are SIR's 4 responsibilities? 5 A So as far as I can remember, they 6 are part of the Ministry's supervision with 7 SKAT and they carry out various forms of 8 investigations into -- they carry out various 9 investigations into SKAT's business areas. 10 Q Okay. So this audit report makes 11 certain observations about the administration 12 of dividend withholding tax, correct? 13 A Correct. 14 Q And so, for example, in 15 Paragraph 11 on Page 4, SIR observes that 16 "it's not satisfactory that it's possible for 17 dividend recipients to receive dividend tax 18 even if the company paying the dividend has 19 not paid the withheld dividend tax to SKAT," 20 correct? 21 A Yes. 22 Q And that remained true in the 23 period January 2012 to August 2015, correct? 24 THE INTERPRETER: January? 25 I'm sorry.</p>

CONFIDENTIAL
Christian Ekstrand - May 7, 2021

17 (Pages 244 to 247)

Page 244	Page 245
<p>1 A I've never met her myself, but 2 she's been the head of Accounts 2 for a long 3 period. She had retired when I had this case 4 assigned.</p> <p>5 Q Okay. Do you know whether she 6 played any role in drafting the 7 Problemkatalog?</p> <p>8 A She did.</p> <p>9 Q Do you know whether anyone else 10 played a role in drafting the Problemkatalog?</p> <p>11 A As far as I remember, several names 12 are mentioned in the Problemkatalog.</p> <p>13 Q Do you recall anyone else 14 that -- any other names?</p> <p>15 A Not right now, no.</p> <p>16 Q Have you ever -- is the term 17 "Problemkatalog" used within SKAT apart from 18 this document?</p> <p>19 MR. WEINSTEIN: Objection to form.</p> <p>20 A I have no knowledge of having seen 21 other Problemkatalogs.</p> <p>22 Q Do you know who this Problemkatalog 23 was sent to?</p> <p>24 A No.</p> <p>25 Q Do you know whether any remedial</p>	<p>1 measures were taken as a result of the 2 Problemkatalog?</p> <p>3 A I think that we would need to 4 review the Problemkatalog in order to 5 determine what the desired measures were, 6 measures as in remedial action.</p> <p>7 Q Well, so, for example, one of the 8 things the Problemkatalog proposes on Page 20 9 is "stricter documentation requirements for 10 refund of Danish dividend tax concerning the 11 ownership of the shares."</p> <p>12 Do you see that?</p> <p>13 MR. WEINSTEIN: He has 2006 in 14 front of him, the audit report.</p> <p>15 Q Oh, sorry. So Exhibit 3052 is the 16 Problemkatalog.</p> <p>17 (Above-mentioned document marked 18 for Identification.)</p> <p>19 MR. WEINSTEIN: We're probably 20 approaching a break time.</p> <p>21 MR. SCHOENFELD: Okay. Let's take 22 a break now and we can return to this.</p> <p>23 VIDEO OPERATOR: Please stand by. 24 The time is 8:15 a.m. New York time and we're 25 going off the record.</p>
<p style="text-align: center;">Page 246</p> <p>1 (Brief recess taken.)</p> <p>2 VIDEO OPERATOR: The time is 3 8:27 a.m. New York time and we're back on 4 record.</p> <p>5 Q Mr. Ekstrand, do you have 6 Exhibit 3052, the Problemkatalog, in front of 7 you?</p> <p>8 A I do.</p> <p>9 Q Okay. So referring to the Bates 10 numbers in the bottom right hand corner, I'm 11 on page 517935.</p> <p>12 THE INTERPRETER: Page what?</p> <p>13 79-what?</p> <p>14 MR. SCHOENFELD: 517935.</p> <p>15 A Yes.</p> <p>16 Q And so in the paragraph beginning 17 K-0-N-K-R-E-T, Ms. R□mer is proposing 18 stricter documentation requirements to 19 establish ownership of shares for purposes of 20 refund of Danish dividend tax, correct?</p> <p>21 A That's what it says, yes.</p> <p>22 Q Between 2006 and 2012, did SKAT 23 produce any stricter documentation 24 requirements to establish ownership?</p> <p>25 A So this is referring to nominee and</p>	<p style="text-align: center;">Page 247</p> <p>1 omnibus custodians. Denmark, during this 2 period, make requirements ordering a 3 stricter -- established stricter requirements 4 to these omnibus custodians.</p> <p>5 I think that at the time, or just 6 shortly after this, there was a project 7 called "Trace."</p> <p>8 MR. SCHOENFELD: Can I pause you 9 for a second? I just lost everything after 10 "project called Trace."</p> <p>11 A So the project "Trace" was that 12 several European countries and international 13 banks got together in order to find a way or 14 model which could be net clearance. So I 15 said "net clearance," but net settlement.</p> <p>16 But they would get together in 17 order to attempt to deal with these omnibus 18 accounts, which would make requirements of 19 the shareholder concerning registration with 20 whatever -- back where you have your omnibus 21 custodian, but this work was on the way for 22 several years. They have yet to reach a 23 solution.</p> <p>24 This requires that everywhere in 25 the world, also in the U.S., that this</p>

CONFIDENTIAL
Christian Ekstrand - May 7, 2021

18 (Pages 248 to 251)

Page 248	Page 249
<p>1 happens. It was not possible for them alone 2 to strengthen requirements in this area. 3 So in my understanding, we have 4 accepted this, but Trace is -- nothing came 5 of it.</p> <p>6 Q Did SKAT itself adopt any stricter 7 requirements to establish shareholding 8 between 2006 and 2012?</p> <p>9 THE INTERPRETER: Can I ask you to 10 repeat the question?</p> <p>11 Q Did SKAT itself adopt any stricter 12 requirements to establish shareholding 13 between 2006 and 2012?</p> <p>14 A No. As far as I know, the 15 requirement also exists at the time, which 16 means where you fill out a form stating that 17 you are the beneficial owner -- I've 18 mentioned this a number of times -- you 19 enclose documentation regarding your domicile 20 and cases where you pay taxes.</p> <p>21 Also, you enclose third-party 22 documentation stating that you have shares 23 with the custodian and it is for these shares 24 that you are attempting to reclaim dividend 25 tax.</p>	<p>1 Q Do you know where there was any 2 official response to the Problemkatalog after 3 it was written in 2006?</p> <p>4 A I do not know.</p> <p>5 Q Let's turn to document 3003. (Above-mentioned document marked 7 for Identification.)</p> <p>8 Q Have you seen this document before?</p> <p>9 A Yes.</p> <p>10 Q Did you see it in preparation for 11 your deposition?</p> <p>12 A Yes.</p> <p>13 Q Have you seen it prior to your 14 preparation for your deposition?</p> <p>15 A I don't think so.</p> <p>16 Q So this is a SIR report from 2010 17 concerning withholding tax on foreign 18 shareholders dividend tax, correct?</p> <p>19 A Yes.</p> <p>20 Q When an audit report like this is 21 generated from SIR, what's the ordinary 22 process after the report is issued?</p> <p>23 A So, in general, the report is sent 24 to SKAT and we have one-channel reception for 25 reports. And I'm unsure of the name of that</p>
<p style="text-align: center;">Page 250</p> <p>1 unit.</p> <p>2 But then, once received, it will be 3 forwarded to the correct business area, to 4 the deputy directors within that area, and 5 they then can consequently decide what needs 6 to happen.</p> <p>7 Q And is there a process for ensuring 8 or confirming that necessary follow-up is 9 taken with respect to audit reports?</p> <p>10 A So my understanding is that it is 11 up to the relevant business unit or business 12 areas. It is up to them to decide whether 13 any follow-up is needed for whatever issues.</p> <p>14 Q Okay. So on the first page, in the 15 first paragraph, SIR identifies a problem in 16 that it's possible that too much withholding 17 taxes were refunded via the so-called refund 18 scheme.</p> <p>19 Do you see that?</p> <p>20 MR. WEINSTEIN: Objection to form.</p> <p>21 A What it says here is that they 22 cannot rule out that there are too many 23 refunds under the refund of withholding tax 24 scheme.</p> <p>25 Q So what's your understanding of the</p>	<p style="text-align: center;">Page 251</p> <p>1 problem that SIR is identifying?</p> <p>2 MR. WEINSTEIN: Objection to form.</p> <p>3 A Which problem are you referring to?</p> <p>4 Q Well, what's your understanding of 5 SIR's observation in that first paragraph? 6 What issue are they addressing in this 7 report?</p> <p>8 MR. WEINSTEIN: Objection to form.</p> <p>9 A I just need to review the text. (Witness reviewing.)</p> <p>10 So, to my understanding, this 11 refers to the fact that we have two refund 12 schemes. We have the form scheme and we have 13 the bank scheme.</p> <p>14 Under the form scheme, we are very 15 fine, what we have discussed previously, that 16 the conditions are met in connection with the 17 documentation that we submitted.</p> <p>18 In the meantime, there's a bank 19 scheme that has been put in place where the 20 bank sends a spreadsheet containing 21 information, but not necessarily 22 documentation. Just information about a 23 refund to be paid.</p> <p>24 So, to my understanding, the</p>

CONFIDENTIAL
Christian Ekstrand - May 7, 2021

19 (Pages 252 to 255)

Page 252	Page 253
<p>1 problem is that there was no -- the problem 2 was that the bank scheme and the form scheme 3 did not correspond, which means that you 4 could have an application under the 5 spreadsheet scheme that also had been 6 submitted under the form scheme.</p> <p>7 That was how I understood it.</p> <p>8 Q On Page 12 of the report, SIR makes 9 certain findings, right?</p> <p>10 A Yes.</p> <p>11 Q So starting at the bottom, SIR 12 finds that "previous investigations initiated 13 by SKAT have not been followed up on," 14 correct?</p> <p>15 A Correct.</p> <p>16 Q Did SKAT agree with that finding?</p> <p>17 A I have no knowledge about that.</p> <p>18 Q What do you mean you have no 19 knowledge about that fact?</p> <p>20 A I have no knowledge about whether 21 there was no follow-up on previous reports 22 made.</p> <p>23 Q Well, did you do anything to 24 educate yourself about that finding or SKAT's 25 follow-up on previous investigations?</p>	<p>1 A No. I have referred to what the 2 report says.</p> <p>3 Q In the bullet above that, it says, 4 "SIR finds that there are no checks in 5 connections with refund requests as to 6 whether the investor is actually a 7 shareholder and whether the investor is, in 8 fact, liable for tax in Denmark or not."</p> <p>9 Was that accurate as of 2010?</p> <p>10 A I wouldn't say so, no.</p> <p>11 Q Why not?</p> <p>12 A So there was a process in place and 13 we've discussed that several times. When we 14 submit an application, or when we receive an 15 application, first we review whether it's in 16 compliance with the conditions.</p> <p>17 That is already when mail is 18 opened, where their applications are divided 19 into two parts. Subsequently, we go through 20 whether the application complies with the 21 criterias for being awarded a refund.</p> <p>22 I -- whether the form has been 23 printed and signed, whether a certificate 24 from the domicile is included, and whether a 25 dividend credit advice has been included from</p>
<p>Page 254</p> <p>1 a third party, and whether this matches the 2 application submitted before this is inputted 3 into the system.</p> <p>4 So there are checks in place.</p> <p>5 Q The purpose of that process was to 6 confirm that a shareholder was 7 the then -- sorry.</p> <p>8 The purpose of that process was to 9 confirm that a dividend withholding tax 10 applicant was the beneficial owner of the 11 dividend, correct?</p> <p>12 A Yes.</p> <p>13 Q And SIR is observing here that 14 there -- that in its view, there are 15 deficiencies in that process, correct?</p> <p>16 MR. WEINSTEIN: Objection to form.</p> <p>17 Asked and answered.</p> <p>18 A No, I do not think that's what 19 they're doing. Maybe they're referring to 20 the spreadsheet scheme where we do not 21 perform this control.</p> <p>22 Q Do you know whether, in response to 23 the findings in this audit report, SIR spoke 24 with anyone in Accounting 2 and shared its 25 observations about the process for dividend</p>	<p>Page 255</p> <p>1 withholding tax refunds?</p> <p>2 A No.</p> <p>3 Q A working group was established 4 following the issuance of this audit report, 5 correct?</p> <p>6 A A working group was established at 7 some point, yes.</p> <p>8 Q Do you know whether it was in 9 response to this audit report?</p> <p>10 A No.</p> <p>11 Q And so I take it you don't know 12 what that working group -- well, do you know 13 what that working group did, if anything, in 14 response to the findings of the 2010 audit 15 report?</p> <p>16 A I don't remember. But if there's a 17 memo to that effect, let's review it.</p> <p>18 Q Are you aware of a 2016 report by 19 the Rigsrevisionen?</p> <p>20 A Yes.</p> <p>21 Q And how are you familiar with that 22 report?</p> <p>23 A I have read it.</p> <p>24 Q Did you read it in preparation for 25 this deposition?</p>

CONFIDENTIAL
Christian Ekstrand - May 7, 2021

21 (Pages 260 to 263)

Page 260	Page 261
<p>1 A Yes.</p> <p>2 Q And Lisbeth R□mer is writing about</p> <p>3 the same concerns in 2011, correct?</p> <p>4 A And what problem specifically are</p> <p>5 you referring to?</p> <p>6 Q This problem of reconciliation.</p> <p>7 A Yes.</p> <p>8 Q And legislation is passed in 2012</p> <p>9 to address that issue.</p> <p>10 Is that correct?</p> <p>11 A Yes.</p> <p>12 Q And it becomes effective for large</p> <p>13 companies in 2013, correct?</p> <p>14 A Well, listed companies.</p> <p>15 Q Sorry. Listed companies.</p> <p>16 A Yes.</p> <p>17 Q The next document is another</p> <p>18 warning from Lisbeth R□mer from October of</p> <p>19 2011.</p> <p>20 MR. WEINSTEIN: Objection to form.</p> <p>21 MR. SCHOENFELD: This is</p> <p>22 Exhibit 3004.</p> <p>23 (Above-mentioned document marked</p> <p>24 for Identification.)</p> <p>25 Q Mr. Ekstrand, do you have that</p>	<p>1 document in front of you?</p> <p>2 A Yes.</p> <p>3 Q Do you see in the last sentence of</p> <p>4 the document, Ms. R□mer refers to the</p> <p>5 possibility of fraud with respect to dividend</p> <p>6 withholding tax refunds?</p> <p>7 A Yes.</p> <p>8 Q And she explains earlier in the</p> <p>9 document, at the bottom of the second page,</p> <p>10 that one of her concerns about fraud is that</p> <p>11 SKAT doesn't know a foreign dividend</p> <p>12 recipient and may, therefore, refund dividend</p> <p>13 withholding tax to the wrong person.</p> <p>14 Is that right?</p> <p>15 MR. WEINSTEIN: Objection to the</p> <p>16 form.</p> <p>17 A Well, that risk, you can say, is</p> <p>18 always present.</p> <p>19 Q How is it always present?</p> <p>20 A Well, if you submit that</p> <p>21 documentation, we will refund to the</p> <p>22 incorrect individual.</p> <p>23 What she says here is that she</p> <p>24 wants a net principal where all share owners</p> <p>25 are to be registered. This is a method that</p>
<p style="text-align: center;">Page 262</p> <p>1 has been an attempt to put into place for</p> <p>2 many years, as we mentioned earlier with the</p> <p>3 Trace project.</p> <p>4 And this project cannot be</p> <p>5 fulfilled, cannot be carried out. Because in</p> <p>6 actuality, what it means is that a foreign</p> <p>7 share owner who wants to trade shares in</p> <p>8 Denmark will need to have a bank account in</p> <p>9 Denmark, and if he were to trade shares in</p> <p>10 Germany, he would need a bank account in</p> <p>11 Germany, and so on, and so forth.</p> <p>12 They have yet to be able to produce</p> <p>13 such a model.</p> <p>14 Q So you mentioned earlier that Trace</p> <p>15 project.</p> <p>16 Other than Denmark's participation</p> <p>17 in the Trace project, are you aware of any</p> <p>18 particular remedial measures that were taken</p> <p>19 in response to Ms. R□mer's October 4, 2011</p> <p>20 memo?</p> <p>21 A As far as I know, this was the only</p> <p>22 option we had to enter into a collaboration</p> <p>23 with other European countries to do this.</p> <p>24 Q Okay. You can set that exhibit</p> <p>25 aside. I'd like you now to turn to</p>	<p style="text-align: center;">Page 263</p> <p>1 Exhibit 3009.</p> <p>2 (Above-mentioned document marked</p> <p>3 for Identification.)</p> <p>4 Q Have you seen this document before?</p> <p>5 A Yes.</p> <p>6 Q In the course of preparation for</p> <p>7 this deposition?</p> <p>8 A Yes.</p> <p>9 Q Have you reviewed it prior to this</p> <p>10 deposition?</p> <p>11 A No.</p> <p>12 Q It's addressed to Jens Br□chner.</p> <p>13 Do you see that?</p> <p>14 A Yes.</p> <p>15 Q And are you aware that Mr. Br□chner</p> <p>16 has testified before the parliamentary</p> <p>17 commission that he never received this memo?</p> <p>18 A Yes, I think I've read that.</p> <p>19 Q If you look at Page 15 of the</p> <p>20 memo --</p> <p>21 A Yes.</p> <p>22 Q -- there's a chart showing a number</p> <p>23 of particular recommendations that SIR is</p> <p>24 making for administration of the dividend</p> <p>25 withholding tax.</p>